Woodsville Sdn Bhd v Giltspur Holdings Sdn Bhd & Ors

HIGH COURT (KUALA LUMPUR) — COMPANIES WINDING UP NO D2–28–197 OF 1990
ABDUL AZIZ J
22 MAY 2001

Companies and Corporations *— Liquidation — Leave to purchase part of company's assets — Bid to purchase by member of Committee of Inspection — Price offered by member of committee was most favourable — Offer to purchase was not prejudicial to company — Conflict of interest, whether abuse of position — Sale without legal taint and unexceptionable principle applied — Companies (Winding Up) Rules 1972 r 144*

The petitioners were appealing against the decision of the court to grant leave to the second and fourth respondents to jointly purchase a property ('the property) of the first respondent company ('the company'). The company was in liquidation. The company had six contributories with equal shares. The petitioners were one of them. Of the others, two were nominee companies of the second and fourth respondents respectively. The second respondent was also a member of the Committee of Inspection ('COI'). Leave was required on account of the second respondent's being a member of the COI because r 144 of the Companies (Winding Up) Rules 1972 ('the Rules') prohibits a member of the COI to 'become purchaser of any part of the company's assets' except with leave of the court. The liquidators of the company, as part of the liquidation process had been endeavoring to sell the property. A valuation dated 28 July 1999 had placed the market value at RM4m on an 'as is' basis and RM5.7m upon conversion. The liquidators had two offers, one of RM4m from Barun Industries (M) Sdn Bhd ('Barun'), and another of RM4.2m from some agency called Perkhidmatan Utama. For some reason the offer by Perkhidmatan Utama was not accepted, so the offer lapsed. That left only Barun's offer. The COI's wish was that the property should be sold for RM4.2m but the liquidators were unsuccessful in persuading Barun to increase their offer. The liquidators approached the COI about the position of Barun's offer and the COI communicated to the liquidators their inability to agree to Barun's price of RM4m, insisting still on RM4.2m. Presumably fearing to lose the Barun's offer without getting any other better offer, the liquidators on the same day entered into a sale and purchase agreement with Barun which was made conditional on the court's approval. The liquidators informed the COI of their acceptance of the Barun's offer on 3 March 2000. On 6 March 2000, the second and fourth respondents made the offer to purchase the property for a cash consideration of RM4.05m. On the same day, the COI requested the liquidators to take note of the new bid. There followed the application of the second and fourth respondents for leave under r 144 of the Rules. Leave was granted by the court to the second and fourth respondents. The petitioners appealed.

Held:

(1) There was no abuse by the second respondent of his position as a member of the COI because, irrespective of the fact that the timing of the offer might be beneficial to him and the fourth respondent, their offer was not detrimental to the assets of the company. At the time they made their offer, the certified value of the property was RM4m and the highest offer in existence was Barun's RM4m, Perkhidmatan Utama's offer of RM4.2m having lapsed. Although initially the COI had insisted on RM4.2m, there was no proof that the COI, and therefore the second respondent, believed that the true value was RM4.2m. It could have been simply a stand to get a better price, probably influenced by Perkhidmatan Utama's offer. The COI's communication to the liquidators of 6 March 2000 asking them to take note of the offer of the second and fourth respondents was an indication that they found the offer of RM4.05m favourable. The leave granted under r 144 of the Rules was only to give the second and fourth respondents the capacity to buy but would not prevent the liquidators from accepting a better offer (see p 572D–G).

(2) There would be an abuse of position if the offer of the second and fourth respondents was prejudicial to the company where their assets were concerned. It was not in the circumstances. The fact that, with knowledge of what had been going on, the respondents had to go only RM50,000 higher than Barun's offer to be the highest bidder was irrelevant. If anyone at all should be aggrieved at that, it was Barun, but Barun's grievance, if at all they were aggrieved, was not relevant. The inside knowledge, by itself, was not an abuse because the second respondent would obtain it as a matter of course by virtue of his position as a member of the COI. The offer of the two respondents was in effect more favourable than Barun's (see p 573A–C).

(3) A member of a COI who wishes to become a purchaser of the company's assets assumes two roles. One was that of a member of the committee. In that role he was duty-bound to keep the interests of the company at heart. The other was the role of the potential buyer. In that role he was entitled to want the best deal for himself like any other potential buyer. There was naturally a conflict of interest. In considering leave under r 144 of the Rules, the important thing was to see that the conflict of interest would not result in anything detrimental to the company where its assets were concerned. In this case, it would not. The price offered by the two respondents was the best available in the circumstances (see p 573C–E).

(4) While the principle of a sale having to be without legal taint and unexceptionable may be the correct principle, whether a particular sale is one that is without legal taint and unexceptionable or one that is not must depend on the particular

circumstances of the sale. In this case, whatever else the second and fourth respondents might have done or not done, they had done nothing to prevent or defeat a better offer, and their offer was the best in the circumstances. There was no legal taint. The second respondent had not taken any part in any deliberation of the COI on the sale to him and the fourth respondent. The court could not seen for what palpable reason the sale to them could be said not to be unexceptionable (see p 575G–I).

[**Bahasa Malaysia summary**

Pempetisyen-pempetisyen merayu terhadap keputusan mahkamah dalam membenarkan responden kedua dan keempat membeli bersama sebidang hartanah ('hartanah tersebut') syarikat responden pertama ('syarikat tersebut'). Syarikat tersebut sedang dalam penyelesaian. Syarikat tersebut mempunyai enam penyumbang dengan jumlah syer yang sama. Pempetisyen merupakan salah satu daripada mereka. Mengenai yang lain, dua daripada mereka merupakan syarikat penerima namaan responden-responden kedua dan keempat masing-masing. Responden kedua juga merupakan ahli Jawatankuasa Pemeriksaan ('JP'). Kebenaran diperlukan memandangkan responden kedua adalah ahli kepada JP kerana k 144 Kaedah-kaedah (Penggulungan) Syarikat 1972 ('Kaedah-Kaedah tersebut') melarang ahli-ahli JP daripada 'menjadi pembeli aset syarikat tersebut' melainkan dengan kebenaran mahkamah. Penyelesai-penyelesai syarikat tersebut, sebagai sebahagian daripada proses penyelesaian, telah mencuba menjual hartanah tersebut. Penilaian bertarikh 28 Julai 1999 telah menetapkan harga pasaran pada RM4 juta pada dasar 'as is' dan RM5.7 juta selepas pertukaran (conversion). Penyelesai-penyelesai tersebut telah mendapat dua tawaran, satu untuk RM4 juta dari Barun Industries (M) Sdn Bhd ('Barun'), dan satu lagi dari RM4.2 juta dari sebuah agensi bernama Perkhidmatan Utama. Atas sebab-sebab tertentu, tawaran Perkhidmatan Utama tidak diterima dan ini mengakibatkan tawaran tersebut luput. Hanya tinggal tawaran dari Barun. JP mengharapkan bahawa hartanah tersebut dijual untuk RM4.2 juta, tetapi penyelesai-penyelesai tidak berjaya mempengaruhi Barun supaya meningkatkan tawarannya. Penyelesai-penyelesai telah memberitahu JP mengenai tawaran Barun, tetapi JP menyatakan bahawa mereka tidak dapat menerima tawaran Barun sebanyak RM4 juta dan masih menegaskan harga RM4.2 juta. Oleh kerana penyelesai-penyelesai khuatir gagal terlepas tawaran Barun tanpa mendapat tawaran-tawaran yang lain, pada hari yang sama, penyelesai-penyelesai telah memasuki suatu perjanjian jual beli dengan Barun, atas syarat kebenaran mahkamah diperolehi. Penyelesai-penyelesai tersebut telah memberitahu JP mengenai penerimaan tawaran Barun pada 3 Mac 2000. Pada 6 Mac 2000, responden-responden kedua dan keempat membuat tawaran untuk membeli hartanah tersebut dengan balasan wang sebanyak

RM4.05 juta. Pada hari yang sama, JP telah meminta penyelesai-penyelesai tersebut supaya mengambil perhatian tawaran tersebut. Berikutannya adalah permohonan daripada responden-responden kedua dan keempat untuk kebenaran di bawah k 144 Kaedah-Kaedah tersebut. Kebenaran diberi oleh mahkamah dan pempetisyen-pempetisyen merayu.

Diputuskan:

(1) Responden kedua tidak menyalahgunakan kuasanya sebagai seorang ahli jawatankuasa JP kerana, melainkan fakta bahawa masa tawaran mungkin lebih berfaedah kepadanya dan kepada responden keempat, tawaran mereka tidak menjejaskan aset syarikat tersebut. Pada masa mereka membuat tawaran tersebut, nilai sah hartanah tersebut adalah RM4 juta dan tawaran tertinggi yang ada adalah tawaran Barun iaitu RM4 juta, memandangkan tawaran Perkhidmatan Utama sebanyak RM4.2 juta telah luput. Walaupun pada mulanya JP menegaskan harga RM4.2 juta, tiada bukti bahawa JP, dan oleh demikian responden kedua, mempercayai bahawa nilai sebenar adalah RM4.2 juta. Mungkin hanya satu pendirian untuk mendapatkan harga yang lebih baik, yang mungkin dipengaruhi oleh tawaran Perkhidmatan Utama. Perhubungan JP dengan penyelesai-penyelesai pada 6 Mac 2000 menyuruh penyelesai-penyelesai untuk mengambil perhatian akan tawaran responden-responden kedua dan keempat adalah satu petanda bahawa mereka mendapati tawaran RM4.05 juta tersebut baik. Kebenaran yang diberikan di bawah k 144 Kaedah-Kaedah tersebut hanya untuk memberikan responden-responden kedua dan keempat keupayaan untuk membeli tetapi tidak menghalang penyelesai-penyelesai daripada menerima tawaran yang lebih baik (lihat ms 572D–G).

(2) Penyalahgunaan kedudukan akan berlaku jika tawaran responden-responden kedua dan keempat adalah prejudis kepada syarikat di mana aset-aset mereka adalah berkaitan. Ini bukan keadaannya. Hakikat bahawa, dengan pengetahuan apa yang sedang berlaku, responden-responden hanya melebihi RM50,000 daripada tawaran Barun untuk menjadi penawar yang tertinggi tidak relevan. Sekiranya sesiapapun yang patut berasa terkilan, ia adalah Barun, tetapi kilanan Barun, jika mereka memang terkilan, tidak relevan. Pengetahuan dalaman, dengan sendirinya, bukan satu penyalahgunaan kerana responden kedua akan menerimanya sebagai hal yang biasa memandangkan jawatan beliau sebagai ahli JP. Tawaran kedua-dua responden pada hakikatnya lebih baik daripada tawaran Barun (lihat ms 573A–C).

(3) Seorang ahli JP yang ingin menjadi pembeli aset-aset syarikat memegang dua peranan. Salah satunya adalah sebagai ahli jawatankuasa. Dalam peranan ini beliau mempunyai kewajipan untuk melindungi kepentingan syarikat. Satu lagi adalah peranan

pembeli yang berpotensi. Dalam peranan ini beliau berhak untuk mendapatkan tawaran yang terbaik untuk dirinya seperti mana-mana pembeli berpotensi yang lain. Sememangnya wujud konflik kepentingan. Dalam mempertimbangkan kebenaran di bawah k 144 Kaedah-Kaedah tersebut, perkara yang penting untuk diamati adalah agar konflik kepentingan tersebut tidak akan mengakibatkan apa-apa yang menjejaskan syarikat di mana aset-asetnya adalah berkaitan. Dalam kes ini, ia tidak begitu. Harga yang ditawarkan oleh kedua-dua responden adalah yang paling baik dalam keadaan tersebut (lihat ms 573C–E).

(4) Sementara prinsip satu jualan tanpa kecacatan di sisi undang-undang dan tidak boleh dibantah mungkin prinsip yang betul, sama ada satu jualan tertentu adalah tanpa kecacatan di sisi undang-undang dan tidak boleh dibantah atau sebaliknya mestilah bergantung kepada keadaan tertentu jualan tersebut. Dalam kes ini, apa sekalipun yang telah dilakukan atau tidak dilakukan oleh responden-responden kedua dan keempat, mereka tidak berbuat apa-apa untuk menghalang atau menggagalkan satu tawaran yang lebih baik, dan tawaran mereka adalah yang terbaik dalam keadaan ini. Tiada terdapat kecacatan di sisi undang-undang. Responden kedua tidak mengambil apa-apa bahagian dalam mana-mana perbincangan JP tentang jualan kepada beliau dan responden keempat. Mahkamah tidak menemui apa-apa sebab yang ketara tentang jualan kepada mereka itu yang boleh dikatakan boleh dibantah (lihat ms 575G–I).]

Notes

For cases on liquidation generally, see 3(1) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 310–311.

Cases referred to

Holder v Holder & Ors [1968] 1 All ER 665 (refd)

Liquidators of North British Locomotive Co Ltd v Lord Advocate [1963] SC 272 (refd)

Legislation referred to

Companies (Winding Up) Rules 1972 r 144

Ong Chee Kwan (*Lee Ong & Kandiah*) for the petitioners.

Teng Chong Moi (*Shook Lin & Bok*) for the second and fourth respondents.

Michael Lim (*HK Wong & Partners*) for the Committee of Inspection.

Abdul Aziz J:. The petitioners are appealing against my decision of 21 December 2000, to give leave to the second and fourth respondents to jointly purchase a property of the first respondent company ('the company')

having its postal address at No 11, Jalan Delima, Kuala Lumpur, at the price of RM4.05m. The company is in liquidation. The company has six contributories with equal shares. The petitioners are one of them. Of the others, two are Parquin Sdn Bhd and Milverton Sdn Bhd, which are nominee companies of the second and fourth respondents respectively. The second respondent is also a member of the Committee of Inspection ('COI') of the company. Leave was required on account of the second respondent's being a member of the COI because r 144 of the Companies (Winding Up) Rules 1972 ('the Rules') prohibits a member of the COI to 'become purchaser of any part of the company's assets' except by leave of the court.

The liquidators, as part of the liquidation process, had been endeavouring to sell the property. A valuation dated 28 July 1999 had placed the market value at RM4m on an 'as is' basis, and RM5.7m upon conversion. The liquidators had two offers, one of RM4m from Barun Industries (M) Sdn Bhd ('Barun'), and another of RM4.2m from some agency called Perkhidmatan Utama. The latter offer was good up to 29 February 2000. For some reason which is not necessary to be mentioned, that offer was not accepted by that date, and Perkhidmatan Utama was not willing to extend the date, so the offer lapsed. That left only Barun's offer. The COI's wish was that the property should be sold for RM4.2m, but the liquidators were unsuccessful in persuading Barun to increase their offer. Barun brought forward the date of lapse of their offer from 6 March 2000 to 2 March 2000. The liquidators approached the COI about the position of Barun's offer, and on 2 March 2000, the COI communicated to the liquidators their inability to agree to Barun's price of RM4m, insisting still on RM4.2m.

Presumably fearing to lose the Barun offer without getting any other better offer, the liquidators on the same day entered into a sale and purchase agreement with Barun which was made conditional on the court's approval. The liquidators informed the COI of their acceptance of the Barun offer on 3 March 2000. On 6 March 2000, the second and fourth respondents made the offer to purchase the property for a cash consideration of RM4.5m. They paid an earnest deposit of RM83,000. On the same day, the COI requested the liquidators to take note of the new bid, by which I gather that they were quite content with the offer.

There followed the application of the second and fourth respondents for leave under r 144 of the Rules (encl (45)) and the liquidators' application for approval of the sale to Barun (encl (48)), which I heard together. On 21 December 2000, I dismissed the liquidators' application and gave leave to the second and fourth respondents. The petitioners had opposed both the applications. In my judgment, I said that I was not in favour of their grounds for opposing the applications and that I would give my reasons should there be an appeal. The written judgment that I delivered then was to explain why, as between the two competing applications, I allowed the application of the second and fourth respondents and dismissed the application of the liquidators, and to argue away the fear that had been troubling my mind that my decision might result in no sale

should the anticipated sale to the second and fourth respondents not go through, seeing that my decision would result in the aborting of the sale to Barun.

Since only the petitioners have appealed, and the appeal is against the granting of the leave to the second and fourth respondents, I shall deal only with the petitioners' grounds for opposing the leave application of those respondents.

The petitioners said that the requirement for leave under r 144 of the Rules is imposed as a safeguard against any abuse by a member of the COI in respect of the assets of the company. They said that leave ought not to be granted because the second respondent had abused his position. The abuse, they argued, lay in making a bid for the property after knowing, from inside, information obtained by virtue of being a member of the COI, of the valuation report, of the offer of Perkhidmatan Utama and its subsequent withdrawal, and of Barun's offer. Knowing all that, he and the fourth respondent were able to make an offer which was just RM50,000 higher than the unconverted value of the land and Barun's price, and which in the circumstances was the best price, whereas he knew that the COI had insisted on a price of RM4.2m or the property.

In my judgment, there was no abuse by the second respondent of his position as a member of the COI because, irrespective of the fact that the timing of the offer might be beneficial to him and the fourth respondent, their offer was not detrimental to the assets of the company, At the time they made their offer, the certified value of the property was RM4m and the highest offer in existence was Barun's RM4m, Perkhidmatan Utama's offer of RM4.2m having lapsed. Although initially the COI had insisted on RM4.2m, there is no proof that the COI, and therefore the second respondent, believed that the true value was RM4.2m. It could have been simply a stand to get a better price, probably influenced by Perkhidmatan Utama's offer. The COI's communication to the liquidators of 6 March 2000 asking them to take note of the offer of the second and fourth respondents, was an indication that they found the offer of RM4.5m favourable.

The petitioners argued that Perkhidmatan Utama's offer of RM4.2m was an indication that it was still possible to obtain better offers. The fact, however, was that no better offers were forthcoming. The leave granted under r 144 of the Rules was only to give the second and fourth respondents the capacity to buy but would not prevent the liquidators from accepting a better offer. This is what I said in my earlier judgment:

> The granting of leave to purchase to the second and fourth respondents does not, in my opinion, bring on the liquidators any corresponding obligation to sell to them. Whether the liquidators will sell to the second and fourth respondents, and the terms and conditions on which they would sell to them, are matters for the liquidators' judgment. If a genuine buyer should come along and offer to purchase the property at a price that would bring significantly better returns than the sale to the second and fourth respondents would bring, the liquidators should be free to consider his offer. But unless such an offer comes along, and assuming that the second and fourth

respondents' terms of payment are reasonable, it would be reasonable to expect that a sale to them would come about.

In my judgment, there would be an abuse of position if the offer of the second and fourth respondents was prejudicial to the company where their assets were concerned. It was not in the circumstances. The fact that with knowledge of what had been going on, those respondents had to go only RM50,000 higher than Barun's offer to be the highest bidder was irrelevant. If at all anyone should be aggrieved at that, it was Barun, but Barun's grievance, if at all they were aggrieved, was not relevant. The inside knowledge, by itself, was not an abuse because the second respondent would obtain it as a matter of course by virtue of his position as a member of the COI. The offer of the two respondents was in effect more favourable than Barun's by RM122,000 because the sale to Barun would have involved a deduction of RM72,000 agency fees.

A member of a committee of inspection who wishes to become a purchaser of the company's assets assumes two roles. One is that of a member of the committee. In that role he is duty bound to keep the interests of the company at heart. The other is the role of a potential buyer. In that role, he is entitled to want the best deal for himself like any other potential buyer. There is, naturally, a conflict of interest. In considering leave under r 144 of the Rules, in my judgment the important thing is to see that the conflict of interest would not result in anything detrimental to the company where its assets are concerned. In this case it would not. The price offered by the two respondents was the best available in the circumstances. As submitted by their counsel, there would be abuse of position if they, for instance, bid at lower than RM4m, or persuaded the other members of the COI and the liquidators to accept their bid.

The fact that they could convert the land so that it could fetch a value of RM5.7m is a neutral factor, being a natural gain from the purchase, something that any other purchaser would benefit from the purchase.

Several authorities were cited by learned counsel for the petitioners, but they are of no assistance or are distinguishable.

Snell's Equity (13th Ed) at pp 282–283, merely lays down that 'a purchase of trust property by a trustee is voidable at the instance of any beneficiary', no matter how beneficial it may be to the trust estate, but there are exceptions to the rule, one of which is that the court has power to sanction a sale. What would be helpful to know is what the matters are that the court should take into consideration in giving sanction, but that is not dealt with in those passages.

The same may be said of the *Law of Company Liquidation* by J O'Donovan (3rd Ed) which at p 237 teaches that a sale of any liquidation asset to a member of the committee of inspection could be opened to challenge, so that the court's approval is necessary, but does not lay down the matters that should be considered in granting approval.

Holder v Holder & Ors [1968] 1 All ER 665 was a case where, on a challenge by a beneficiary, the Court of Appeal found that in the special

circumstances of the case, the rule of equity by which a trustee's purchase of the trust property might be avoided, did not apply. It is difficult to see for what purpose the case was cited. Maybe it was to apply the special circumstances in that case, which was a case of purchase by an executor of estate property, to this case by way of analogy. But application by analogy is seldom safe. Each case must be considered according to its own merits and circumstances.

In *Liquidators of North British Locomotive Co Ltd v Lord Advocate* [1963] SC 272, a Scottish case, the liquidators of a company in a creditor's voluntary liquidation proposed to sell part of the assets of the company to the Board of Trade, which was represented on the committee of inspection. In Scotland, there was no provision, such as we have in r 144 of the Rules, enabling a member of the committee of inspection to become the purchaser of an asset of the company with the leave of the court, and prohibiting the purchase unless with leave. The liquidators in that case, although having statutory power to sell the assets of the company to any person, feared that because the sale was to a member of the committee of inspection, who was in a position of trust, doubts might arise as to the validity of the sale. So they sought the court's leave under the general statutory provision that enabled liquidators to apply to the court to determine questions. Two questions required to be answered. One was whether the application was necessary, the Lord Advocate maintaining that it was not, because the liquidators had statutory power to sell. The other was whether approval should be given.

On the first question, it was decided that the application for approval was appropriate because, even though the liquidators had power to sell, the sale might be challengeable as a sale to a person in a position of trust. The reason is given at p 277. The learned judge thought that a sale to a member of the committee of inspection is not necessarily and inevitably illegal because there are instances where a sale to a trustee may not, in certain circumstances, be open to a successful challenge. He then cited the instance of the sale to the Board of Trade as one that might not be open to successful challenge, but concluded nevertheless that the safe course would be to apply for sanction of the sale. I quote the crucial passage:

> While the committee has no specific duty to approve or disapprove of the sale that is proposed, and while there is no specific obligation on liquidators to obtain their advice or consent before selling by private bargain any of the assets in the liquidation, I am of opinion that the members of a committee of inspection are so far clothed with the character of trustees that a sale to any one of them of any of the liquidation assets could be open to challenge by a party with title and interest to do so. I do not suggest that such a transaction is necessarily and inevitably illegal. A creditor purchaser is, in my opinion, in the same position as a trustee who is also a beneficiary on the trust estate, and, in such cases, transactions with the trust may not, in certain circumstances, be open to successful challenge: cf *Perston v Perston's Trustees* (1863) 1 Macph 245, per Lord Justice Clerk Inglis at p 254. This passage is quoted also in *Menzies on Trustees*, para 467. And there also have been cases where trustees have been held entitled themselves to purchase with the consent of the beneficiary, eg, when all attempts to find a purchaser otherwise have failed. In

> my opinion, therefore, even when the Board of Trade is represented on the committee of inspection as a trustee for other creditor-beneficiaries, in the exercise of its powers and in the performance of its duties, through its representative, of a member of a committee of inspection, there may be circumstances in which, its representative, having stood aside from the deliberation on a proposed sale of a trust asset, a sale to the Board of Trade of an asset in the liquidation could be held to be without legal taint and unexceptionable: but, as at present advised, I doubt whether it would be safe for a liquidator in the position of the petitioners to assume that, as a matter of law, such a sale would be without risk of challenge so far as the purchasers are concerned.

That passage was cited by the petitioners' counsel to argue that for the court to sanction a sale to a member of a committee of inspection under r 144 of the Rules, the member must have been completely uninvolved and his conduct unexceptionable, and the sale must be without legal taint. That submission was made in reference to the circumstances that I have mentioned earlier about the second and fourth respondents that were relied on to argue that leave should not be granted.

It seems to me that the part of the passage that speaks of a sale to the Board of Trade is part of the citing of the instances where a sale to a person in the position of a trustee, as the Board of Trade was, may not be open to a successful challenge, but nevertheless it would be prudent to take the safe course of obtaining the prior sanction of the court. The learned judge was there hypothesizing a sale that had taken place and was being challenged. He was not looking at the actual position of the case in hand and deciding on whether the sale should be authorized. That he was to do later. The hypothesis was that — should a sale have been done and should it be challenged — 'there may be circumstances in which, its representative having stood aside from the deliberation on a proposed sale of a trust asset, a sale to the Board of Trade of an asset in the liquidation could be held to be without legal taint and unexceptionable'. The phrases 'there *may be* circumstances', 'deliberation on *a proposed sale* of a trust asset' and 'could be held to be' are all indicative of a hypothesis. Of course, even though it was a hypothesis, the passage might imply that for a proposed sale to be authorized, the sale must be 'without legal taint and unexceptionable', and one of the requirements for it to be so is that the member of the committee of inspection must have stood aside from the deliberation on the proposed sale, which must mean deliberation on the proposed sale to the member. While the principle of a sale having to be without legal taint and unexceptionable may be the correct principle, whether a particular sale is one that is without legal taint and unexceptionable, or one that is not must depend on the particular circumstances of the sale. In this case, whatever else the second and fourth respondents might have done or not done, they had done nothing to prevent or defeat a better offer, and their offer was the best in the circumstances. There was no legal taint. The second respondent had not taken part in any deliberation of the COI on the sale to him and the fourth respondent. I could not see for what palpable reason the sale to them could be said not to be unexceptionable.

To return to the Scottish case, it is at p 278 that the second question was answered. The learned judge decided to authorize the liquidators to sell to the Board of Trade. The considerations that influenced the decision are stated in the following passage:

> The proposals for sale are supported by skilled advice, although no actual test of the market appears to have been made. It is, however, averred that no other possible purchaser exists who could or would be prepared to take over the subjects on the basis of a going concern. It is not denied that it was only the Board of Trade that showed any interest in the subjects under consideration. The committee of inspection, other than the representative of the Board of Trade, have apparently unanimously approved the proposed sale. These circumstances are such that it appears to me that the proposals are the best that can be devised so as to secure as much for the creditors of the company as may be got from the realization of these assets. Obviously, it is in their interests that the assets which are here to be disposed off should be sold as nearly on the basis of a going concern as is possible.

In the end, it came down to what was best economically for the liquidation. That was what, as it clearly appeared to me, the sale to the second and the fourth respondents here would be in the circumstances.

Order accordingly.

Reported by Wong Siok Chin